

From: John Liston
To: 'microsoft.atr(a)usdoj.gov'
Date: 11/21/01 11:55am
Subject: Comments on U.S. v. Microsoft Proposed Final Judgment

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

November 21, 2001

To the United States Department of Justice:

I thank you for the opportunity to comment on the U.S. v. Microsoft Proposed Final Judgment.

I am motivated to write because I am angry about the Proposed Final Judgment. I believe the court should reject the judgment because it is weak, fraught with loopholes for Microsoft to exploit, and is solely forward-looking. That being said, I believe the court should use the terms of the judgment as part of an interim remedy as it seeks to impose a final remedy.

I speak as one who owns a small software development company and who has observed Microsoft and the software industry for over 20 years. I believe that the point to any settlement with Microsoft is both to punish Microsoft for its past misdeeds and to impose restrictions that will level the competitive playing field. I believe the Proposed Final Judgment does neither of these.

Regarding the past: Microsoft has been convicted twice of using its monopoly in desktop operating systems to achieve dominance in other areas. I believe Microsoft's wrongdoing goes far beyond what it has been convicted of, and has greatly harmed both the software industry and consumers. I believe the best measure of the harm Microsoft has done is the \$36 billion cash it now has banked, which in a truly competitive environment would be \$0. Microsoft pockets better than 90 percent of software industry profits, and its cash reserves increase by \$1 billion each month. I believe to restore a competitive environment, any settlement should fine Microsoft \$36 billion now, plus \$1 billion per month until Microsoft is found to be in full compliance with a harsher final judgment. Microsoft has ignored consent decrees in the past, leading us to the current anticompetitive situation, and cannot be trusted to comply with any behavioral remedy. The only remedy Microsoft will respond to is judicial force, and I think that begins with the serious fines I suggest. Microsoft is capable of paying these fines with cash on hand, so it cannot possibly harm current operations. The money should be distributed to the 50 states in proportion to their 2000 population. I think of this as Microsoft's payment of punitive damages for past behavior.

Microsoft's prior convictions were based on two specific anticompetitive practices that I believe require additional and more specific remedies. First was the anticompetitive bundling of Internet Explorer with the Windows operating systems, harming Netscape Communications. Second was Microsoft's proven intent to "embrace, extend and extinguish" the Java programming language, harming Sun Microsystems. I believe the punitive damage payments do not cover the direct harm done to the competitive environment and consumers by these specific actions.

The issue with bundling Internet Explorer is essentially the question the question of "what is an operating system?" Microsoft insists that an operating system is whatever Microsoft decides it is, so it can bundle anything it wants. I think that there is little to be gained from arguing with Microsoft on this issue. Let Microsoft bundle whatever it wants in the operating system. I believe the issue to consumers is not what is in the operating system. Instead, the issue is whether the OS is supported and works correctly. I believe that Microsoft's continuing monopoly in desktop operating systems is remedied in part by requiring a lengthy period of OS support. Were there a competitive environment, the duration of OS support would be determined competitively. But Microsoft holds a monopoly, so I think the court must impose a reasonable OS support period. Doing so will prevent Microsoft churning customers by rapid OS obsolescence. I believe Microsoft must be required to support each OS revision, including all bundled software, for not less than seven years. This support must include fixing bugs and offering these fixes in maintenance releases at no cost to consumers, since Microsoft can charge what it wants for the OS up

front. As further consumer protection, Microsoft must be required not to bundle enhancements with its operating system bug fixes. And to ensure the Internet Explorer OS component "works correctly", it must be required to fully support any W3C Internet standard it implements. That support can be monitored through conformance tests by the W3C itself, at Microsoft's expense, and Microsoft must be required to withhold any OS release when Internet Explorer does not fully conform with W3C standards. Note that this does not prevent Microsoft from innovating.

Regarding the direct harm Microsoft did to Netscape Communications: I don't think you can redress this because Netscape has since been bought by AOL and portions spun off. All I think you can do is make sure Microsoft cannot use its Internet Explorer browser monopoly to impose its own standards on the Internet, and I think the requirement to conform to W3C standards does that.

As for the harm done to Sun Microsystems and the Java language, Microsoft's intent was to use the control it has over an extensive developer network to cause them to write "polluted" Java applications that work only on Windows. In doing so, it violated its license agreement with Sun. Microsoft has since settled with Sun, but nothing has undone the harm Microsoft did to consumers. To remedy this, Microsoft must be required to deliver Sun's latest Java Virtual Machine as part of the Windows OS, and to distribute JVM bug fixes under the same standards as it distributes its own Windows OS bug fixes.

Regarding the future, I think the Proposed Final Judgment begins to right the wrongs of Microsoft's current business practices, but it does not go far enough to create a level competitive playing field. I would seek to eliminate loopholes in the terms of the Proposed Final Judgment, and strengthen their enforcement, and I propose three additional terms.

First, Microsoft must be forced to publish the Office file formats. Microsoft has historically changed its Office file formats on a regular basis simply to cause users to upgrade Office regularly. Publishing the Office file formats will cause Microsoft to compete based on the merits of the Office software, and not merely bank on "network effects" and users' inability to migrate their documents to competing office productivity products.

Second, Microsoft should be required to divest itself of its programming language products and to no longer compete in programming language development. Microsoft's language products are closely tied to the Windows operating systems, so divesting Microsoft of the languages business has a leveling effect on the marketplace. It will cause Microsoft to publish the Windows operating system APIs fully and fairly. It will force Microsoft to use the same language compilers as the rest of the industry, eliminating the incentive to create undocumented APIs. Also, the separate languages business will be subject to competitive forces, and may decide to offer the programming language products on other operating systems. Eliminating language products should not affect current Microsoft profitability, and proceeds of the sale should go to registered users of the affected products.

Third, Microsoft should be prevented from purchasing technologies or technology companies for a period of five years. Microsoft claims to be an innovator, and fights fiercely for its right to innovate. Truth is, most Microsoft innovation has come from copying the products of much smaller companies and then out-marketing them, or from purchasing such companies outright and subsuming their innovations. I think that preventing the purchase of companies and technologies for five years will force Microsoft to innovate in its own right in order to maintain a competitive market position. This will enable the birth of new Microsoft competitors.

I hope you will give my comments some thought. I think they comprise a much fairer remedy for Microsoft's past predatory practices, and provide an effective constraint on future behavior. I also think they do not call for a major oversight effort and its expense, which I think is a great weakness of the Proposed Final Judgment. Finally, I believe the court must immediately

impose interim conduct restrictions and monetary penalties until there is a final conclusion of this case.

Sincerely,

John Liston
3520 Nichols Rd.
Medina, OH 44256